

# MEMORANDUM

October 25, 2005

TO: THE LOS ANGELES COUNTY CLAIMS BOARD

FROM: PARKER, MILLIKEN, CLARK O'HARA & SAMUELIAN  
Brenton F. Goodrich

WARREN R. WELLEN  
Principal Deputy County Counsel  
Public Works Division

RE: Claim of Christopher and Tiffany Yang

DATE OF INCIDENT: Winter Storms of 2005

AUTHORITY REQUESTED: \$817,000, which includes the purchase of the claimants' property, and delegation of authority to the Director of the Department of Public Works to execute all documents required to effectuate the purchase.

COUNTY DEPARTMENT: Los Angeles County Department of Public Works

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## CLAIMS BOARD ACTION:

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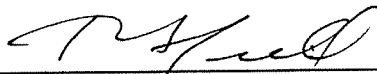
Approve


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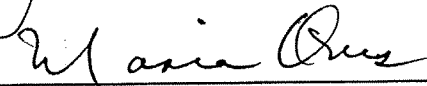
Disapprove

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Recommend to Board of Supervisors for Approval

  
\_\_\_\_\_, Chief Administrative Office  
**ROCKY ARMFIELD**

  
\_\_\_\_\_, County Counsel  
**JOHN F. KRATTLI**

  
\_\_\_\_\_, Auditor-Controller  
**MARIA M. OMS**

on November 7, 2005

## SUMMARY

This is a recommendation to settle for \$817,000 the claims of Mr. Christopher and Mrs. Tiffany Yang, arising from landslide damage to the Yang residence and real property at 3246 Heather Field Drive, Hacienda Heights, California ("the Yang Property"). The settlement includes transfer of the Yang Property to the County.

## LEGAL PRINCIPLES

The County is liable in inverse condemnation where real property is damaged, and the County's public improvements, as designed and constructed, are a substantial contributing cause of that damage. The County is also liable for damage to real property where a dangerous condition on County property, of which the County has notice or which the County negligently created, is a substantial contributing cause of the damage.

## SUMMARY OF FACTS

The Yang Property comprises a home constructed on a small pad at the top of a steep, 130-foot-high filled slope constructed by a developer. In 1983, a landslide occurred on nine adjacent, privately-owned parcels located on the same filled slope. That landslide blocked a County road, Montellano Avenue. Litigation ensued and the County obtained a judgment in excess of \$6 million against the successor to the developer. The County employed those funds to acquire the nine parcels on which the original landslide was located (see attached map) and to design and extensively reconstruct the slope in 1998-1999 so that Montellano Avenue, located at the foot of the landslide, could safely be reopened. The reconstructed slope and the numerous improvements that the County installed, including several large retaining walls, anchor piers, and four dewatering wells ("County Project"), are public improvements. The County also obtained a slope easement on the bottom portion of the Yang Property for construction access for the County Project.

The property on which the County Project is constructed is immediately adjacent to the north side of the Yang Property (see attached map). The County Project includes a large reinforced concrete retaining wall on deep piers, installed on the northern boundary of the Yang Property and extending down the filled slope ("the Downslope Wall"), which provides lateral support to the Yang Property. The Downslope Wall was necessitated in part because the County Project included removal of large quantities of soil from the top of the slope

adjacent to the Yang Property, thus creating a substantial difference in height between the Yang Property building pad and the adjacent, lower County Project property.

It was known when the County Project was designed in 1997 that the subsurface geology beneath the project site was a buried canyon, a watercourse for substantial, naturally-occurring subsurface water. Accordingly, the County Project also included a plan to monitor groundwater beneath the slope and to remove groundwater using the dewatering wells, should groundwater levels exceed the plan's so-called "Action Levels."

Heavy rains occurred between the two dates Department of Public Works' staff monitored groundwater levels (November 28, 2004 and February 28, 2005). The groundwater in the County's slope had increased well above the Action Levels at which, according to the County Project's plan, dewatering by pumping the wells should have commenced. In addition, after the elevated groundwater levels were detected at the end of February, commencement of dewatering was delayed for almost two months until April 20, 2005.

The County's investigation has determined that during the winter of 2005 groundwater levels also rose on portions of the slope adjacent to the County's Project including the Yangs'. It is doubtful that pumping water from the wells on the County's property would have had a significant effect on groundwater levels on the adjacent property.

In March 2005, indications of land movement began to be reported on the southwestern portion of the County Project property near the Yang Property. In mid-April, Mr. Yang reported new cracks in his patio which were confirmed by Department of Public Works' personnel.

In late April 2005, Thomas Rubbert, counsel for Yang, filed claims with the County on behalf of Yang (and also on behalf of Yang's next southerly neighbor, Lawrence A. Brown), asserting that the County Project to repair the original landslide had failed, causing land movement on the County Project property, in turn causing the Downslope Wall to fail and move and consequent extensive damage to the Yang Property, and lesser damage to the Brown property.

April 2005 survey data revealed that substantial land movement on the County Project property occurred between January and late April 2005. It also showed that the Downslope Wall, together with the piers that support the wall, had moved both northward away from the Yang Property and eastward down the slope due to the landslide.

Inspection has documented substantial land movement and cracking on the Yang Property including the building pad, clearly extending from the land movement on the County Project property. This land movement has caused significant damage to the Yang residence and surrounding improvements, especially on the northern side of the Yang Property nearest the County's Downslope Wall. As a result, the County plans to "yellow-tag" the Yang Property (designate the property as posted for limited duration entry only by specific, designated persons.).

## DAMAGES

In mid-May 2005, the Yangs moved out of their home due to the increasing structural damage and broken piping. The Yangs have been renting an alternate residence since then, at a cost of \$2,550 per month, for a total rent cost through November 15, 2005, of \$15,300. The Yangs have also incurred other documented expenses related to the damage and to their move, totaling \$2,354 and geotechnical expert expenses of \$1,350. (Total: \$19,007.)

The Department of Public Works' appraisers conclude that the fair market value of the Yang Property as of mid-May 2005 is \$793,500. The County's settlement proposal of \$817,000 is comprised of the \$793,500 fair market value and the \$19,007 in the Yangs' expenses, and an additional \$4,500 allowance for the Yangs' rental costs pending close of escrow on the settlement.

Were the claim to be litigated, there is the possibility that the Yangs would pursue additional, substantial damages under various theories, perhaps including emotional distress. In addition, the Yangs would also seek recovery of attorneys' and expert's fees and prejudgment interest. The total of these additional amounts, were the Yangs successful in recovering them, would likely be a significant six-figure sum.

## STATUS OF CASE

On April 27, 2005, the Yangs presented a government claim to the County. No suit has been filed. The County's attorneys fees to date are approximately \$24,000. The County's geotechnical expert fees to date are approximately \$67,000.

## EVALUATION

As noted above, the County Project is clearly a public work. The Yangs and their geotechnical expert (who has substantial experience with this site) contend that the County Project, as designed and constructed, has failed and is a

substantial contributing factor to the land movement on the Yang Property. The Yangs assert that the County Project removed soil that provided lateral support to the Yang Property and substituted an insufficiently anchored Downslope Wall. The Yangs further contend that the County Project, as designed and constructed, did not provide an adequate factor of safety for the reconstructed slope. The Yangs argue that these circumstances also constitute actionable dangerous conditions on County property. The Yangs also claim that the County's failure to timely monitor groundwater levels and failure to immediately and aggressively dewater the ground once it was known that the slope water levels exceeded the plan's "Action Levels" was negligence which created a dangerous condition that contributed to the cause of the land movement on the Yang Property.

The County would contend, were the matter not settled, that the landslide on the County Project property was the natural result of pre-existing natural conditions and would have occurred and damaged the Yang Property, even absent the County Project; and that no aspect of the design or construction of the County Project, nor its management, was a substantial contributing factor contributing to the slide's occurrence. The County would also contend that the County neither created, nor had notice of, any dangerous condition on the County Project site.

The Department of Public Works believes that the Yang home is unrepairable at reasonable cost. It is highly unlikely that the Yang Property could be restabilized and a new house constructed. Hence, the Yang Property will likely be deemed to be a total loss. The County's experts have determined the \$793,500 fair market value upon which the County's settlement proposal is based. The Yangs' other expenses are all likely to be found to be appropriate and reasonable consequential damages.

The County's acquisition of the Yang Property will enable that parcel to be integrated into a new repair plan to restabilize the slope on which the County Project is sited.

Notwithstanding the arguments available in defense of the Yang claim, it is our opinion that expert testimony will be in conflict and that a court could reasonably find that the County Project was a substantial contributing cause of the damage to the Yang property and, accordingly, that a "taking" occurred under inverse condemnation, and/or that the County Project created a dangerous condition that was a substantial contributing factor in the damage. It is also not unlikely that the failure to earlier detect and more aggressively respond to the groundwater levels above the plan's "Action Levels" also could be found to be a basis for County liability. The cost of such litigation, and attendant attorneys' and expert's fees, would be substantial.

Therefore, we recommend that the Yangs' claim be settled for the sum of \$817,000, to be paid from Road Funds, with the Yangs transferring title to the Yang Property to the County. The Department of Public Works concurs in this recommendation.

APPROVED:

A handwritten signature in black ink, appearing to read 'KAL', is written over a horizontal line.

KAREN A. LICHTENBERG

Assistant County Counsel  
Public Works Division

KAL:WRW:gm